

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Case No: 1:21-cv-00012

Brandy Suckley, Reannan Suckley,
Natasha Calderon, Shoghi Farr, Blake Ish,
Jyl Albertson, Mathew Baumstark, Danika
Owan, Doc Ritchie, Lynette Cole-Perea,
Manuel Perea, Emily Holly, and Bryan
Fleming,

Plaintiffs,

vs.

The City of Williston, North Dakota,

Defendant.

SECOND AFFIDAVIT OF DAVID TUAN

STATE OF NORTH DAKOTA)
) SS.
COUNTY OF WILLIAMS)

I, David Tuan, being first dully sworn, deposes and states as follows:

1. I remain the City Administrator for the City of Williston, North Dakota as explained in my initial affidavit that was filed in connection with the City's Brief in Opposition to Plaintiffs' Motion for Temporary Restraining Order (Doc. # 28). The contents and attachments to my previous affidavit (Doc. # 28) are incorporated by reference. This affidavit is submitted in connection with the City's Memorandum in Support of Motion for Summary Judgment.

2. Prior to the commencement of this lawsuit, I was contacted by Plaintiffs Brandy Suckley and Jyl Albertson on numerous occasions. Both Suckley and Albertson indicated they disagreed with the City's Pit bull ordinance and desired an opportunity to address the City about how it could be changed.

3. The first email I received from Suckley with respect to the Pit bull ordinance was dated March 2, 2020. A true and correct copy of my email correspondence with Suckley from March 2, 2020, is attached hereto as Exhibit # 1.

4. As shown in Exhibit # 1, in response to Suckley's email explaining her reasoning for disagreeing with § 4-89, I explained to her in my March 2, 2020, email at 4:47 PM that the Pit bull ordinance was "an especially contentious topic given the recent pitbull attack a few months ago. Due to the community response following that incident, I do not sense the City Commission has any desire to revisit this ordinance or consider an amendment, but I will forward your concerns to the board and the City Attorney's office for their information." The Pit bull attack I referenced in this email referred to the July 1, 2019, attack at Rickard Elementary playground in Williston. The details of this attack are found in the Affidavits of Taylor Olson and Tate Cymbaluk. The Pit bull attack at Rickard Elementary was devastating. As shown in the photographs, the victims sustained very serious injuries as a result of the attack of the prohibited Pit bulls. There was a substantial community response to this attack. Many people voiced concerns over why these dogs were present in the City in light of the prohibiting ordinance. Based on my observations as City Administrator, there was – and continues to be – substantial public support for keeping the prohibition on Pit bulls as part of the City's ordinances.

5. On July 22, 2020, I received emails from both Suckley and Albertson. Both Suckley and Albertson requested information with respect to proceeding with a legal procedure for changing the City's Pit bull ordinance. I exchanged numerous emails with Suckley and Albertson between July 22 and 29, 2020. In the course of this email correspondence, I was informed that Suckley and Albertson were working together in an attempt to change the Pit bull ordinance. I invited both Albertson and Suckley to visit me at City Hall by email on July 29, 2020.

True and correct copies of my email correspondence with Suckley and Albertson between July 22 and 29, 2020, are attached hereto as Exhibit # 2.

6. On July 24, 2020, I was copied on an email directed to Mayor Klug and various City Commissioners that purported to be from a Julie Wall. The Wall email thanked the City for keeping citizens safe from Pit bull attacks by having a ban. Further, the Wall email contained various embedded links, pictures, and information relating to the dangers of Pit bulls. A true and correct copy of the July 24, 2020, email I received from Wall is attached hereto as Exhibit # 3.

7. Subsequent to the July 29, 2020, email exchange with Suckley and Albertson, I met with them at City Hall. They expressed their desire to change the ordinance. I informed them they have every right to exercise the legal process to change the ordinance through political means.

8. On August 4, 2020, I received an email from Bonny T Lee who purported to be a Registered Nurse and volunteer for www.DogsBite.org. The email contained an attached letter that cited numerous articles and contained a full article from the "Herald-Tribune." A true and correct copy of the August 4, 2020, email I received from Bonny T Lee and its attachments are attached hereto as Exhibit # 4.

9. On August 21, 2020, Suckley sent me an email indicating she would like to be put on the meeting agenda. She also included a packet of information in support of her position in opposition to the City's Pit bull ordinance. Suckley was placed on the agenda to speak at the September 8, 2020, Commission Meeting at 6:00 p.m. at City Hall. I informed her of this by email dated August 24, 2020. A true and correct copy of my email correspondence between August 21 and 24, 2020, with Suckley is attached hereto as Exhibit # 5.

10. On September 8, 2020, I received an email from Suckley which contained a PowerPoint presentation attachment. A true and correct copy of Suckley's September 8, 2020, email with the attached PowerPoint presentation is attached hereto as Exhibit # 6.

11. Suckley spoke at the September 8, 2020, City Commission meeting. A true and correct copy of the September 8, 2020, Commission Meeting minutes reflecting her presentation are attached hereto as Exhibit # 7.

12. On September 9, 2020, Suckley sent me an email thanking me for letting her speak before the City Commission the night before. A true and correct copy of Suckley's September 9, 2020, email to me is attached hereto as Exhibit # 8.

13. On September 14, 2020, Suckley again emailed me to inquire as to whether her presentation generated any activity with the City. A true and correct copy of Suckley's September 14, 2020, email is attached hereto as Exhibit # 9.

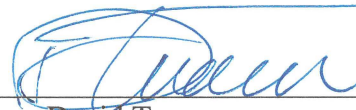
14. On September 21, 2020, Suckley sent me an email indicating she will be attending the upcoming Commission meeting with Albertson and requesting a meeting with me. She further indicated she wished to ensure she took all proper steps to ensure the Pit bull issue could be on the upcoming ballot. I responded to her later that day informing her that I would be happy to meet with her, but must refrain from giving her any legal advice for a ballot vote. I am not a licensed attorney in the State of North Dakota. I recommended she seek guidance from an attorney to assist her in drafting an alternate ordinance or assist with the public voting process. On September 23, 2020, Suckley emailed me again to inform me that she dropped off a model ordinance and requested our counsel review it. A true and correct copy of my email correspondence between September 21 and 23, 2020, with Suckley is attached hereto as Exhibit # 10.

15. To date, the information that Suckley presented to the City has not resulted in a change to the City's ordinance. The City did not receive a petition as required to put an issue on the ballot. The public has not voted on the repeal or amendment of the Pit bull ordinance.

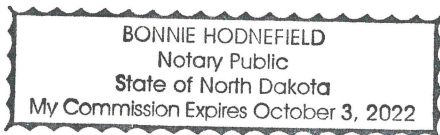
16. As shown in the information attached to my affidavit, the City has received substantial information both in support of and in opposition to the City's Pit bull ordinance. If the City Commission believed the Pit bull ordinance was no longer rationally related to a legitimate government purpose, it is my opinion that it would amend or repeal it. This has not happened to date.

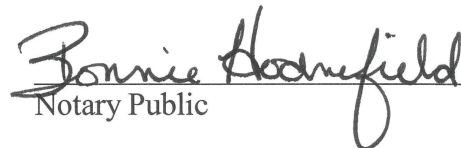
Dated this 06 day of JUNE, 2022.

By


David Tuan

On this 6th day of June, 2022, before me personally appeared David Tuan, known to me to be the person described in the within and foregoing instrument and acknowledged to me that he executed the same.




Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June, 2022, a true and correct copy of the foregoing **SECOND AFFIDAVIT OF DAVID TUAN** was filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to the following:

V. Gene Summerlin

gene.summerlin@huschblackwell.com

Ryann A. Glenn

ryann.glenn@huschblackwell.com

Amanda L. Wall

amanda.wall@huschblackwell.com

Sydney L. Hayes

sydney.hayes@huschblackwell.com

Attorneys at Law

13330 California St., Suite 200

Omaha, NE 68154

By /s/ Brian D. Schmidt

BRIAN D. SCHMIDT